

**BEFORE THE NORTH CAROLINA INDUSTRIAL COMMISSION**

FILE NUMBER 16-057240

DAVID AYERS  
(Hereinafter called "Employee")

FORSYTH COUNTY  
(Hereinafter called "Employer")

PMA COMPANIES  
(Hereinafter called "Servicing Agent").

**AGREEMENT OF FINAL SETTLEMENT AND RELEASE**

THIS AGREEMENT OF FINAL SETTLEMENT AND RELEASE, made and entered into this, the 29<sup>th</sup> day of November, 2017 by and between David Ayers, hereinafter called the Employee, and Forsyth County, hereinafter called the Employer, and by and through PMA Companies, hereinafter called the Servicing Agent,

**WITNESSETH:**

WHEREAS, the parties are subject to and bound by the provisions of the North Carolina Workers' Compensation Act and, on the 13th day of October, 2016, the relationship of Employer-Employee having existed; and;

WHEREAS, the Employee suffered a compensable injury by accident arising out of and in the course and scope of his employment when as a Maintenance Technician he was pulling up carpet that was glued to a concrete floor. He fell backwards and landed on his lower back and right hip on October 13, 2016, injuring his lower back and right hip, and;

WHEREAS, the Employer and Servicing Agent accepted the Employee's back and hip claim but no Form 60 was filed. The Employee has an average weekly wage of

\$634.03 and compensation rate of \$422.71. The Employer and Servicing Agent have paid \$11,828.62 in medical expenses and \$9,662.80 in indemnity benefits which are ongoing; and

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WHEREAS, the parties expressly understand and agree that the foregoing paragraphs concerning the course of the Employee's medical treatment are only a brief

synopsis of the course of said treatment. The examinations, evaluations, and treatment received by the Employee are more fully set forth in the relevant medical and rehabilitation reports which are submitted to the North Carolina Industrial Commission along with this Agreement. The contents of said documents are hereby incorporated by reference as if fully set forth herein. The Parties certify that the reports attached hereto constitute a full and complete copy of all relevant medical and rehabilitation reports known to exist as required by N.C.G.S. section 97-82 and 04 NCAC 10A.0502(b)(1). The Employee acknowledges that Defendants have agreed to the terms of this settlement and will be making the payments called for herein in reliance upon that certification. The parties to this agreement hereby waive further hearings before the North Carolina Industrial Commission and, in presenting this Agreement for approval, represent that they have made available to the Commission with said Agreement all relevant medical and rehabilitation reports known to exist. The parties hereby stipulate and agree to waive any rights they may have to contest the approval of this Agreement based upon any failure to provide copies of relevant medical or rehabilitation records to the Industrial Commission with this Agreement for approval; and

WHEREAS, the Employee returned to work after the accident but later went out of work due to surgery; and

WHEREAS, the Employee contends that he suffered compensable injuries to his lower back and hip as a result of his accident, and is entitled to compensation for future medical benefits and indemnity benefits until he returns to suitable work. Though, he does not desire additional back surgery related to his work injury. The Employee further

contends that his condition may change, causing additional disability and/or requiring further treatment. The Employee certifies that he is making no claim for partial or total wage loss. The Employer and Servicing Agent contend that the Employee is only entitled to temporary total disability benefits until he returns to suitable work. The Employer and Servicing Agent contend that the Employee has reached maximum medical improvement for his accidental injuries and that the only future medical treatment owed for this claim is detailed the attached Settlement Cost Projection. See, Exhibit A. Further, the Employer and Servicing Agent contend that the Employee is currently able to return to work earning his preinjury wage. The Employer and Servicing Agent agree that the Employee may be entitled to payment of a permanent partial impairment benefit minus any credit per N.C. Gen. Stat. § 97-29 (f); and

WHEREAS, the Employee is not represented and the Employer and Servicing Agent are represented by the Kestenbaum Law Firm, Durham, North Carolina, Jane Kestenbaum appearing; and

WHEREAS, the Employee, Employer, and Servicing Agent feel that it is in the best interest of the parties to have finality of litigation in these matters, and to that end desire to compromise and settle all matters in controversy among themselves, without the necessity of any hearing before the North Carolina Industrial Commission, subject to the approval of said Commission, as by law provided.

NOW, THEREFORE, notwithstanding the controversy between the Employee and the Defendants, and in specific recognition of the need for finality in the litigation, and in

consideration of the things hereinabove received as having been done and the things hereinafter agreed to be done and the mutual agreements on the part of each of the parties, it is agreed as follows:

1. The Employer and Servicing Agent agree to pay or cause to be paid to the Employee and without commutation, the lump sum of THIRTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$35,000.00) in full and final settlement of all compensation due or to become due under and by virtue of the North Carolina Workers' Compensation Act for the claim that is subject to this agreement.

2. Employee is 62 years old and has a remaining life expectancy of 20.4 years or 1,060.8 weeks pursuant to N.C.G.S. 8-46. Even though received in a lump sum, Employee's compensation rate is determined by dividing the net settlement proceeds contemplated herein (\$35,000.00) by Employee's remaining life expectancy as provided by statute (1,060.8). This yields an effective rate of \$32.99 per week, which is to be used by the Social Security Administration in determining any offset due to Employee's receipt of Workers' Compensation benefits. This paragraph affects no other rights or responsibilities, which are set forth elsewhere in this Settlement Agreement. The Employee contends that this claim is in lieu of a lifetime disability claim.

3. The Employer and Servicing Agent will pay, or cause to be paid, any medical bills incurred as the result of the Employee's accepted, compensable injuries up to the date of this agreement and no further. However, the parties agree that all such medical bills are paid in full and there are no outstanding medical bills related to this accepted claim. It is further agreed by the parties that the positions of the respective

parties to the Agreement are reasonable as to the payment of medical expenses. The parties hereby acknowledge that the issue of payment of medical expenses is a material element to the Employer and Servicing Agent entering into this agreement.

4. Even though the Employee has a reasonable expectation of becoming eligible to receive Medicare benefits within the next thirty (30) months, this claim does not fall within the current parameters of requiring formal Medicare approval of a Medicare Set-Aside Arrangement at the date of this settlement as the total settlement value is less than \$250,000. Pursuant to the May 11, 2011 Memorandum from the Centers for Medicare and Medicaid Services (CMS), Medicare approval is only necessary if, at the time of settlement, the Employee has a reasonable expectation of becoming eligible for Medicare benefits within thirty (30) months of settlement and the total settlement value exceeds \$250,000.

In accordance with 42 CFR §411.46 and §411.47, the Medicare Intermediary Manual, and the Medicare Carriers Manual, the parties to this settlement believe that any rights or interests Medicare may have in the within settlement have been adequately considered and protected by allocating a specific amount of the settlement proceeds for a payment of the Medicare-covered medical expenses that the Employee may incur in the future for treatment of his work injury. Based upon the review of the Employee's medical records, age, life expectancy, future cost projections, and based on historical treatment trends, the parties propose that \$6,538.00 is necessary to pay for all future Medicare covered medical expenses he is expected to incur as a result of his work injury. See, Settlement Cost Projection, attached as Exhibit A.

The Employee agrees that if he is required to set aside or repay any portion or all of this settlement to reasonably consider Medicare's interest under federal law, Employee shall be solely responsible for setting aside or repaying such monies from his own funds. Employee agrees to hold harmless Defendant/Employer and its insurer and administrator for loss of Social Security benefits or Medicare benefits he may incur as a result of this settlement. In addition, Employee agrees to release as part of this agreement any rights that he may have to bring any possible future action under the Medicare Secondary Payer Statute (MSP), 42 USC 1395y et seq against Defendant/Employer and its insurer and administrator.

5. The Employer and Servicing Agent agree to pay or cause to be paid the costs of this proceeding before the North Carolina Industrial Commission.

6. It is understood and agreed by the Employee that in making this Agreement, he was not influenced by any representations or statements regarding his condition, the nature of his injuries, or any other matters concerning his claim before the North Carolina Industrial Commission, made by any person, firm, corporation, physician, or surgeon acting for or on behalf of the Employer or Servicing Agent; that the facts in connection with his employment and with his accidental injury and impaired physical condition, if any, are fully known, understood and comprehended by the Employee, and that his rights under the Workers' Compensation Act are thoroughly and completely understood by him. In making this Agreement the parties hereto understand that the Employee's condition as a result of his injuries may be permanent, recurrent and progressive, and in making this



Agreement, it is understood that the sum of money herein paid and other agreements recited above are in full and final settlement of all claims of the Employee against the Employer and Servicing Agent as to claims under the North Carolina Workers' Compensation Act, including future medical expenses, change of condition and/or death benefits. The parties expressly waive the right, if any, to set aside this Settlement Agreement should the medical opinions made orally to the Employee by his health care providers, expressed in this Agreement, and/or in the medical records prove to be in error. Further, the parties agree that this Agreement may not be set aside on the grounds that further or additional medical information or records exist or could be acquired. The parties affirmatively represent to the Industrial Commission that they have each had the opportunity and ability to obtain the medical and other records necessary to appropriately evaluate this claim and to enter into this Settlement Agreement.

7. The Employee agrees to accept the sums herein agreed to be paid to him or on his behalf, in full, final and complete settlement and satisfaction of any past, present and future claims, demands, suits, actions or rights of action of whatsoever nature and kind, which the said Employee now has or may hereinafter have or claim to have on account of the alleged injuries of October 13, 2016. It is the sense of this agreement that the said sums so agreed to be paid shall be accepted in full settlement and satisfaction of all claims arising out of alleged injuries of October 13, 2016, whether presently existing, or presently known, or whether hereinafter existing, appearing or otherwise, and whether by virtue of things now existing or by change of conditions hereinafter. However, it is further agreed that no rights other than those arising under the provisions of the Workers'

Compensation Act are compromised or released. The Employee knowingly and intentionally waives any right he may hereafter have to claim any medical expenses or indemnity compensation for the injuries which are the subject of this agreement.

8. The parties to this agreement hereby waive any hearing before the North Carolina Industrial Commission, and in presenting this agreement for approval, they represent that they have made available to the Commission with said agreement all medical information presently in their possession concerning the Employee's physical condition.

9. This agreement is made expressly subject to the approval of the North Carolina Industrial Commission and to the provisions of the North Carolina Workers' Compensation Act, and the same shall be binding upon the parties to this agreement only if and when the same shall have been submitted to and approved by said Commission either by the endorsement of its approval hereon or by the issuance of its award approving the same.

IN WITNESS WHEREOF, the parties hereto have set their hands and Employee has adopted as his seal the "Seal" appearing beside his signature, all as of the day and year first above written.

 (Seal)  
DAVID AYERS, EMPLOYEE

STATE OF NORTH CAROLINA

COUNTY OF Forsyth

I, Sarah C Whitbred, a Notary Public in and for said County and State, do hereby certify that DAVID AYERS personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this, the 5 day of December, 2017.

My Commission Expires: August 9, 2021

Sarah C Whitbred  
Notary Public



FORSYTH COUNTY,  
Employer

By: [Signature]  
Attorney

PMA COMPANIES,  
Servicing Agent

By: [Signature]  
Attorney

By: [Signature]

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